

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10  
11 VICTOR CEDILLOS,

12 Plaintiff,

13 v.

14 DONNY YOUNGBLOOD, *et al.*,

15 Defendants.

Case No. 1:21-cv-00138-DAD-BAM (PC)

FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM, FAILURE  
TO OBEY A COURT ORDER, AND  
FAILURE TO PROSECUTE

(ECF No. 13)

**FOURTEEN (14) DAY DEADLINE**

16  
17  
18 **I. Background**

19 Plaintiff Victor Cedillos (“Plaintiff”) is a former county jail inmate and current state  
20 prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C.  
21 § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §  
22 636(b)(1)(B) and Local Rule 302.

23 On April 20, 2021, the Court issued a screening order granting Plaintiff leave to file a first  
24 amended complaint or a notice of voluntary dismissal within thirty (30) days. (ECF No. 13.) The  
25 Court expressly warned Plaintiff that the failure to file an amended complaint in compliance with  
26 the Court’s order would result in a recommendation for dismissal of this action, with prejudice,  
27 for failure to obey a court order and for failure to state a claim. (*Id.* at 9–10.)

28 ///

1 The deadline has expired, and Plaintiff has failed to file a first amended complaint or  
2 otherwise communicate with the Court.

## 3 **II. Failure to State a Claim**

### 4 **A. Screening Requirement**

5 The Court is required to screen complaints brought by prisoners seeking relief against a  
6 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.  
7 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous  
8 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
9 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.  
10 § 1915(e)(2)(B)(ii).

11 A complaint must contain "a short and plain statement of the claim showing that the  
12 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
13 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
14 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
15 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as  
16 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*,  
17 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

18 To survive screening, Plaintiff's claims must be facially plausible, which requires  
19 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
20 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*  
21 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully  
22 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility  
23 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

### 24 **B. Plaintiff's Allegations**

25 Plaintiff is currently incarcerated at Wasco State Prison. At the time of the allegations in  
26 the complaint, Plaintiff was housed in the Lerdo Detention Facility ("Lerdo") in Kern County as a  
27 pretrial detainee. Plaintiff names the following defendants: (1) Kern County Sheriff Donny  
28 Youngblood, in his individual and official capacities, (2) Kern County Sheriff Office

Administration, (3) Kern County Lerdo Facility, and (4) Kern County Detention Medical Chief.

Plaintiff alleges that since his arrival at Lerdo, he has placed multiple requests to have the “pod” housing disinfected and cleaned up to basic humane needs of sanitation. He did not get a response from the Kern County Sheriff Administration. Plaintiff voiced and raised concerns of contraction of COVID-19 which has killed and hospitalized thousands. Governor Newsom declared a state of emergency and set forth regulations and guidelines to slow the spread such as disinfecting areas, social distancing, masks, quarantine and testing. Several people have tested positive. Plaintiff was not placed in quarantine. Cells and showers were not disinfected after contamination. Several inmates have been rotated from cell 309 after testing positive. Living quarters have trash and dirt on floors, showers have discarded razors, blood, soiled linen, used soap.

Plaintiff placed multiple requests to see a nurse because of symptoms such as diarrhea shortness of breath, headaches, cough. Plaintiff was told he could be given a test and pass the information along. Plaintiff was “disregarded” by nurses for testing and was told the medical chief has the information. Plaintiff alleges he continues to have symptoms and continues to be deprived of basic humane needs. Both custody and medical are aware because guards admit the conditions are inadequate. The practice is to ignore the unsanitary conditions and not disinfect. Plaintiff was given a dirty bucket with chemical cleanser that is useless because the bucket is never cleaned or disinfected.

Inmates have placed multiple requests and grievances of inhumane living conditions. Guards say the conditions are “horrible” or “disgusting” and would notify administration. The guards only reported back that the “administration is aware.” Plaintiff and inmates live in fear of contamination and need for testing. No action has been made to provide or combat COVID-19.

As remedies, Plaintiff seeks injunctive relief to protect the safety of inmates exposed of COVID-19, and compensatory and punitive damages.

### **C. Discussion**

Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to state a cognizable claim under 42 U.S.C. § 1983.

## 1                                    **1.        Federal Rule of Civil Procedure 8**

2            Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain  
3 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).  
4 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause  
5 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678  
6 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a  
7 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.  
8 at 570). While factual allegations are accepted as true, legal conclusions are not. *Id.*; *see also*  
9 *Twombly*, 550 U.S. at 556–57.

10           Although Plaintiff's complaint is short, it is not a plain statement of his claims. As a basic  
11 matter, the complaint does not clearly state what happened, when it happened or who was  
12 involved. Plaintiff's allegations must be based on facts as to what happened and not conclusions.  
13 In particular, Plaintiff attributes all COVID issues to the “administration,” or the medical chief or  
14 officers or nurses, but does not state what each person did or did not do which violated his  
15 constitutional rights. Plaintiff must name each person he believes violated his constitutional  
16 rights.

## 17                                    **2.        Supervisor Liability**

18           Insofar as Plaintiff is attempting to sue Defendant Sheriff Youngblood or the medical  
19 chief, or any other defendant, based solely upon their supervisory role, he may not do so.  
20 Liability may not be imposed on supervisory personnel for the actions or omissions of their  
21 subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676–77; *Simmons v.*  
22 *Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d  
23 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

24           Supervisors may be held liable only if they “participated in or directed the violations, or  
25 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045  
26 (9th Cir. 1989); *accord Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v.*  
27 *Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). “The requisite causal connection may be established  
28 when an official sets in motion a ‘series of acts by others which the actor knows or reasonably

1 should know would cause others to inflict’ constitutional harms.” *Corales v. Bennett*, 567 F.3d at  
2 570. Supervisory liability may also exist without any personal participation if the official  
3 implemented “a policy so deficient that the policy itself is a repudiation of the constitutional  
4 rights and is the moving force of the constitutional violation.” *Redman v. Cty. of San Diego*, 942  
5 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other  
6 grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970).

7 To prove liability for an action or policy, the plaintiff “must . . . demonstrate that his  
8 deprivation resulted from an official policy or custom established by a . . . policymaker possessed  
9 with final authority to establish that policy.” *Waggy v. Spokane County Washington*, 594 F.3d  
10 707, 713 (9th Cir. 2010). When a defendant holds a supervisory position, the causal link between  
11 such defendant and the claimed constitutional violation must be specifically alleged. *See Fayle v.*  
12 *Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir.  
13 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in  
14 civil rights violations are not sufficient. *See Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir.  
15 1982).

16 It is unclear the conduct Plaintiff alleges Sheriff Youngblood or the medical chief engaged  
17 in that violated his constitutional rights. Plaintiff has failed to allege direct participation in the  
18 alleged violations. Plaintiff talks about failings in social distancing and unclean cells and  
19 showers. Plaintiff has failed to allege the causal link between each defendant and the claimed  
20 constitutional violation which must be specifically alleged. He does not make a sufficient  
21 showing of any personal participation, direction, or knowledge on the defendant’s part regarding  
22 any other prison officials’ actions. Plaintiff has not alleged that Sheriff Youngblood or the  
23 medical chief personally participated in the alleged deprivations.

24 In addition, it is unclear what the policy is that is purportedly at issue. Plaintiff has failed  
25 to “demonstrate that his deprivation resulted from an official policy or custom established by  
26 a . . . policymaker possessed with final authority to establish that policy.”

27 ///

28 ///

### 3. County Defendants

Plaintiff names Kern County Sheriff's Office Administration, Kern County Lerdo Facility, and the medical chief as defendants.

Under section 1983, a local government unit may not be held responsible for the acts of its employees under a respondeat superior theory of liability. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Rather, a local government unit may only be held liable if it inflicts the injury complained of through a policy or custom. *Waggy v. Spokane Cty. Wash.*, 594 F.3d 707, 713 (9th Cir. 2010).

To state a claim, "[i]t is not sufficient for a plaintiff to identify a custom or policy, attributable to the municipality, that caused his injury. A plaintiff must also demonstrate that the custom or policy was adhered to with 'deliberate indifference' " to his constitutional rights. *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1076 (9th Cir. 2016), cert. denied sub nom., *Los Angeles Cty., Cal. v. Castro*, 137 S. Ct. 831 (2017). The deliberate indifference standard is satisfied where a plaintiff alleges facts available to the municipality's policymakers that "put them on actual or constructive notice that the particular omission is substantially certain to result in the violation of the constitutional rights of their citizens." *Castro*, 833 F.3d at 1076.

Here, Plaintiff has not linked any alleged violation of his rights to a policy or practice attributable to county official, nor has he provided facts to support that county official knew of, and blatantly ignored, the alleged violations committed by its employees. Plaintiff's conclusory allegations that they knew of the "horrible" conditions are insufficient. Therefore, Plaintiff has failed to state a cognizable claim against the County defendants.

### 4. Conditions of Confinement

If Plaintiff is not a convicted inmate, the standards are under the Fourteenth Amendment. The Fourteenth Amendment protects the rights of pretrial detainees. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). "[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Demery v. Arpaio*, 378 F.3d 1020, 1029 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 535). During the period of detention prior to trial, a pretrial detainee may be properly subject to the conditions of the jail so long as they do not

1 amount to punishment. *Bell*, 441 U.S. at 536–37. “Pretrial detainees are entitled to ‘adequate  
2 food, clothing, shelter, sanitation, medical care, and personal safety.’ ” *Alvarez-Machain v.*  
3 *United States*, 107 F.3d 696, 701 (9th Cir. 1996) (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246  
4 (9th Cir. 1982)).

5 To state a claim of unconstitutional conditions of confinement against an individual  
6 defendant, a pretrial detainee must allege facts that show: (i) the defendant made an intentional  
7 decision with respect to the conditions under which the plaintiff was confined; (ii) those  
8 conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not  
9 take reasonable available measures to abate that risk, even though a reasonable official in the  
10 circumstances would have appreciated the high degree of risk involved—making the  
11 consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the  
12 defendant caused the plaintiff’s injuries. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir.  
13 2018). Whether the conditions and conduct rise to the level of a constitutional violation is an  
14 objective assessment that turns on the facts and circumstances of each particular case. *Id.*;  
15 *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005).

16 The Court acknowledges COVID-19 poses a substantial risk of serious harm. *See Plata v.*  
17 *Newsom*, 445 F. Supp. 3d 557, 559 (N.D. Cal. Apr. 17, 2020) (“[N]o one questions that [COVID-  
18 19] poses a substantial risk of serious harm” to prisoners.). However, in order to state a  
19 cognizable Fourteenth Amendment claim against Defendant John Does Commissioner, Warden  
20 or Lieutenant, or any other defendant, Plaintiff must provide more than generalized allegations  
21 that they have not done enough to control the spread. *See Booth v. Newsom*, No. 2:20-cv-1562  
22 AC P, 2020 WL 6741730, at \*3 (E.D. Cal. Nov. 17, 2020); *see Blackwell v. Covello*, No. 2:20-  
23 CV-1755 DB P, 2021 WL 915670, at \*3 (E.D. Cal. Mar. 10, 2021) (failure to state a claim against  
24 warden for failure to adequately control the spread of COVID-19 in the prison).

25 In the complaint, Plaintiff alleges generalized concerns that he may be exposed to  
26 COVID-19 while housed at Lerdo. He alleges that safety recommendations are not being met,  
27 and he is not being tested. But such general allegations are insufficient to state a cognizable  
28 Fourteenth Amendment claim. In order to state a cognizable claim, Plaintiff must specifically

1 identify a defendant's challenged conduct, explain how such conduct is unreasonable under the  
2 circumstances, and describe how such conduct harmed Plaintiff. *Johnson v. Duffy*, 588 F.2d 740,  
3 743 (9th Cir. 1978) ("A person 'subjects' another to the deprivation of a constitutional right,  
4 within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative  
5 acts or omits to perform an act which he is legally required to do that causes the deprivation of  
6 which complaint is made.") Plaintiff alleges no facts against a properly named defendant that  
7 suggest the defendant made an intentional decision with respect to the conditions under which the  
8 Plaintiff was confined, which put Plaintiff at substantial risk of suffering serious harm, that the  
9 defendant did not take reasonable available measures to abate that risk and that Plaintiff was  
10 harmed. To the extent that Plaintiff alleges that his requests went unanswered, he does not state a  
11 claim for relief since a prison official's action in reviewing an inmate grievance cannot serve as a  
12 basis for liability under Section 1983. *Buckley v. Barlow*, 997 F.2d 494, 495 (9th Cir. 1993).

### 13 **5. Plaintiff Cannot Represent Other Inmates**

14 A *pro se* inmate cannot represent anyone other than himself in a conditions of  
15 confinement suit. "A litigant appearing in propria persona has no authority to represent anyone  
16 other than himself." *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962); *see also McShane*  
17 *v. United States*, 366 F.2d 286, 288 (9th Cir. 1966) (privilege to appear without counsel is  
18 personal to the litigant). "Although a non-attorney may appear in propria persona in his own  
19 behalf, that privilege is personal to him. He has no authority to appear as an attorney for others  
20 than himself." *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987) (citations  
21 omitted). "[A]n inmate does not have standing to sue on behalf of his fellow prisoners. Rather,  
22 the prisoner must allege a personal loss and seek to vindicate a deprivation of his own  
23 constitutional rights." *Weaver v. Wilcox*, 650 F.2d 22, 27 (3rd Cir. 1981) (citations omitted)).  
24 Thus, "[i]t is plain error to permit [an] imprisoned litigant who is unassisted by counsel to  
25 represent his fellow inmates in a class action." *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th  
26 Cir. 1975) (citation omitted).

27 For these reasons, the Court must construe this action as an individual civil rights suit  
28 brought by Plaintiff alone.



1                                   **6. Injunctive Relief**

2           Insofar as Plaintiff seeks injunctive relief against jail officials at Lerdo, any such request is  
3 now moot because Plaintiff is no longer housed at that facility. *See Andrews v. Cervantes*, 493  
4 F.3d 1047, 1053 n.5 (9th Cir. 2007) (prisoner’s claims for injunctive relief generally become  
5 moot upon transfer) (citing *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam)  
6 (holding claims for injunctive relief “relating to [a prison’s] policies are moot” when the prisoner  
7 has been moved and “he has demonstrated no reasonable expectation of returning to [the  
8 prison]”)).

9           **III. Failure to Prosecute and Failure to Obey a Court Order**

10                   **A. Legal Standard**

11           Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
12 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
13 within the inherent power of the Court.” District courts have the inherent power to control their  
14 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
15 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A  
16 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
17 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46  
18 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,  
19 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
20 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)  
21 (dismissal for failure to comply with court order).

22           In determining whether to dismiss an action, the Court must consider several factors:  
23 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
24 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
25 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779  
26 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

27           ///

28           ///

1           **B.       Discussion**

2           Here, Plaintiff's first amended complaint is overdue, and he has failed to comply with the  
3 Court's order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his  
4 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

5           The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
6 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
7 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
8 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d  
9 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose  
10 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
11 progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Products*  
12 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

13           Finally, the Court's warning to a party that failure to obey the court's order will result in  
14 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;  
15 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's April 20, 2021 screening  
16 order expressly warned Plaintiff that his failure to file an amended complaint would result in a  
17 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and  
18 for failure to state a claim. (ECF No. 13, pp. 9–10.) Thus, Plaintiff had adequate warning that  
19 dismissal could result from his noncompliance.

20           Additionally, at this stage in the proceedings there is little available to the Court that  
21 would constitute a satisfactory lesser sanction while protecting the Court from further  
22 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this  
23 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is  
24 likely to have no effect given that Plaintiff has ceased litigating his case.

25           **IV.       Conclusion and Recommendation**

26           Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY  
27 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim  
28 pursuant to 28 U.S.C. § 1915A, for failure to obey a Court order, and for Plaintiff's failure to

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

IT IS SO ORDERED.

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE